

*In the Matter of Fire Captain (PM3517F), City of Trenton*  
DOP Docket No. 2007-49  
**(Merit System Board, decided August 9, 2006)**

The Division of Human Resource Information Services (HRIS) requests enforcement of its determination that the City of Trenton properly dispose of the March 24, 2006 certification of the Fire Captain (PM3517F), City of Trenton (City) eligible list.

The facts of this matter indicate the following: the Fire Captain (PM3517F), City of Trenton eligible list promulgated on December 22, 2005 and expires on December 21, 2008. In January 2006, the Division of Human Resource Management (HRM) received eight appeals<sup>1</sup> from Fire Fighters with the City claiming that they were performing Fire Captain duties. In response, the City indicated that several of these Fire Fighters were acting as Fire Captains on an interim basis. It explained that two Fire Fighters were filling in for two Fire Captains out on leave and two Fire Fighters were filling in for two Fire Captains who were acting on an interim basis as Battalion Fire Chiefs. These interim appointments were deemed valid by HRM and approved as such. The City also verbally questioned whether it could make interim appointments for Fire Captains who were being assigned to a new title for the City to evaluate. On two separate occasions the City was verbally told that such interim appointments were not valid and would not be approved. The first occasion occurred on March 24, 2006 when the Director of HRM met with City Business Administrator Jane Feigenbaum and other City officials. The second occasion occurred several days later when an HRM staff member informed City Personnel Officer Raissa Walker that such interim appointments were not valid.

On March 24, 2006, the subject eligible list was certified (PL060606) with a disposition due date of June 23, 2006. Thereafter on April 21, 2006, HRM issued a determination based on its classification reviews that Fire Fighters Steven Amriott, Louis Bainbridge, Steven Cason, Ron Kosztyu, Terrence Mulryne, Edward Panasowich, and David Rosen were performing Fire Captain duties. Subsequently, the City returned the certification indicating the appointments of Louis Bainbridge, Edward Panasowich and Steven Cason, the second, fourth and fifth ranked eligibles, respectively, on the certification. By letter dated June 27, 2006, HRIS returned the

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<sup>1</sup> These eight appeals were filed by Fire Fighters Steven Amriott, Louis Bainbridge, Steven Cason, Ron Kosztyu, Terrence Mulryne, Edward Panasowich, David Rosen and Todd Willever. They are the top eight eligibles on the Fire Captain (PM3517F), City of Trenton eligible list.

certification to the City and requested that it be properly disposed of by the amended disposition due date of July 7, 2006. Specifically, HRIS indicated that seven Fire Fighters<sup>2</sup> had been found by HRM to be performing Fire Captain duties. The proposed disposition submitted by the City only called for the appointment of three of these seven Fire Fighters, but did not indicate that the other four employees were no longer performing Fire Captain duties. Therefore, since only three of the required seven appointments were made, HRIS returned the certification for proper disposition. Further, HRIS requested that evidence of Incident Management Level 1 certification be provided for each appointee.

On July 11, 2006, HRIS referred the matter to the Board for enforcement since the City had not returned the certification by the amended disposition date of July 7, 2006. In a letter dated June 30, 2006 but postmarked July 13, 2006, the City responded that it had properly disposed of the certification. It explained that it had appointed Louis Bainbridge, Steven Cason and Edward Panasowich to permanent Fire Captain positions which had been vacant. Additionally, the City argued that the remaining four Fire Fighters, Steven Amriott, Ron Kosztyu, Terrence Mulryne, and David Rosen were serving as interim appointees, filling the positions of four Fire Captains temporarily assigned to Safety Officer positions. The City explained that it is evaluating the Safety Officer position and that the evaluation period is scheduled to elapse in October 2006. Along with this letter, the City included Personnel Action forms for the four Fire Fighters in question documenting the interim appointments.

The Trenton Fire Superior Officers Association, FMBA Local No. 206 and FMBA Local No. 6 (FMBA), represented by Craig S. Gumpel, Esq., argue that the City should be required to appoint the other four Fire Fighters to Fire Captains as they are all performing Fire Captain duties. Specifically, they assert that Ronald Kosztyu is assigned as a Fire Captain to Engine 9, David Rosen is assigned as a Fire Captain to Engine 3, Steven Amriott is assigned as a Fire Captain to Engine 6, and Terrence Mulryne is assigned as a Fire Captain to Engine 7. Additionally, they contend that Ronald Kosztyu, David Rosen, Steven Amriott and Terrence Mulryne are not filling in for Fire Captains in Safety Officer positions. Rather, the FMBA claims that these four Fire Fighters are occupying positions vacated by Fire Captains who were either promoted or retired. Further, the FMBA contends that Todd Willever has also been performing the duties of a Fire Captain. Moreover, in addition to receiving regular appointments, the FMBA requests that each of the seven Fire Fighters receive retroactive appointment dates to January 20, 2006, the date Position Classification Questionnaires were submitted to HRM.

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<sup>2</sup> HRM had found that Todd Willever was properly serving as an interim Fire Captain, filling in for a Fire Captain who was serving as an interim Battalion Fire Chief.

In response, the City maintains that the Fire Captains at issue are encumbering positions vacated by individuals who are serving temporarily as Safety Officers. The City indicates that it has not yet made a final determination as to whether it will continue to assign employees to Safety Officer positions on a full-time basis; it anticipates completing its review of this issue by October 2006. Therefore, the City suggests that, no later than October 31, 2006, the Fire Captains at issue be returned to their permanent titles of Fire Fighter, or, if it chooses to continue the use of the Safety Officer positions, it make permanent appointments from the subject certification to fill the positions vacated by the Safety Officers.

## CONCLUSION

*N.J.S.A. 11A:3-1* and *N.J.A.C. 4A:3-3.1(a)* provide that each position in the career and unclassified services shall be assigned by the Department of Personnel to a job title. *N.J.A.C. 4A:3-3.1(b)* provides that positions in the career service shall be assigned a title, which describes the duties and responsibilities to be performed, the level of supervision exercised and received, and minimum education and experience requirements. Additionally, *N.J.A.C. 4A:3-3.4* provides that no person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds. Also, *N.J.A.C. 4A:3-3.5* states that when the duties and responsibilities of a position change to the extent that they are no longer similar to the duties and responsibilities set forth in the specification and the title is no longer appropriate, the Commissioner shall after review: 1) reclassify the position to a more appropriate title if there is one; 2) establish a new title to which the position shall be reclassified; or 3) take other appropriate action based on the organizational structure of the appointing authority. *N.J.A.C. 4A:3-3.5(c)1* provides that within 30 days of receipt of the reclassification determination, unless extended by the Commissioner in a particular case for good cause, the appointing authority shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the duties and responsibilities to which the employee has permanent rights.

Further, *N.J.A.C. 4A:3-3.3(a)1* states that the Commissioner shall implement and administer the classification plans and establish new titles, abolish unnecessary titles, and consolidate titles where a single title is appropriate for the grouping of positions with similar qualifications, authority and responsibility. Moreover, *N.J.A.C. 4A:3-3.6(b)* provides that requests for new titles or title series must be submitted in writing by the

appointing authority to the Department of Personnel on a designated form and the request must include the following: 1) a detailed explanation of why the new title is needed and why an existing title cannot be used or specification modified; 2) designation of any title to be abolished or replaced; and 3) any other information requested by the Department of Personnel. Furthermore, *N.J.A.C. 4A:3-3.6(d)* pending approval by the Commissioner of a new title or title series, the designation "Tentative Title" may be used for affected positions.

In the instant matter, the City argues that the four Fire Fighters who were not permanently appointed to Fire Captain are serving as interim appointees, filling in for four Fire Captains temporarily assigned to Safety Officer positions. In this regard, the Board notes that the Safety Officer position referenced by the City is not a valid Merit System title. Additionally, as indicated above, requests for new titles or title series must be submitted in writing by the appointing authority to the Department of Personnel (DOP) on a designated form and the request must include a detailed explanation of why the new title is needed and why an existing title cannot be used or specification modified. There is no record of the City submitting such a request for the Safety Officer title. Further, HRM has indicated that on two separate occasions it informed the City that interim appointments for Fire Fighters filling in for Fire Captains assigned to Safety Officer were not valid and would not be approved. HRM has also indicated that the City did not provide any Personnel Action forms for these interim appointments until its June 30, 2006 submission. Therefore, since the Safety Officer title utilized by the City is not a valid Merit System title, and its creation was not properly requested, the Board finds that the interim appointments of the four Fire Fighters not permanently appointed are not valid.

The Board also observes that the City has not at any time denied that the seven Fire Fighters in question are performing Fire Captain duties, nor contended that HRM's determination was in error. As indicated above, an appointing authority must within 30 days of receipt of the reclassification determination either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the duties and responsibilities to which the employee has permanent rights. In the instant matter the City has not done any of the above. Accordingly, the Board orders the City to either permanently appoint Steven Amiott, Louis Bainbridge, Steven Cason, Ron Kosztyu, Terrence Mulryne, Edward Panasowich and David Rosen to the title of Fire Captain or provide evidence that they are no longer performing the duties of a Fire Captain. Furthermore, the City is

ordered to provide evidence of Incident Management Level 1 certification for each appointee.

With regard to the requests by the FMBA, no evidence has been provided that indicates that Todd Willever is not currently serving as a valid interim Fire Captain. Any such evidence or further arguments in this regard should be forwarded to HRM for a determination. Further, with regard to a retroactive appointment date, in accordance with established procedures, if a request for reclassification is upheld, the effective date of implementation of the reclassification shall be the first payroll period immediately after 14 days from the date the DOP received the request for reclassification. In this regard, the DOP received the reclassification request on January 20, 2006, therefore the effective date of implementation would be February 4, 2006. *See N.J.A.C. 4A:3-3.9(f); See also, In the Matter of Michele Lake* (Commissioner of Personnel, decided July 8, 2005). Accordingly, since there was an active eligible list, the Board determines that if any of the seven Fire Fighters in question are appointed, they are to receive retroactive appointment dates of February 4, 2006, upon successful completion of their working test periods.

The Board is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Merit System laws or rules or any order of the Board or Commissioner. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2. See In the Matter of Fiscal Analyst (M1351H), Newark, Docket No. A-4347-87T3* (App. Div. 1989). Thus, in the event that the City does not comply with the Board order within 10 days of issuance of this decision, it is ordered that the appointing authority be assessed a fine of \$100 per day, beginning on the 11<sup>th</sup> day after issuance of this decision, until the City fully complies with this decision, up to a maximum of \$10,000.

## **ORDER**

Therefore, it is ordered that the City either permanently appoint Steven Amiott, Louis Bainbridge, Steven Cason, Ron Kosztyu, Terrence Mulryne, Edward Panasowich and David Rosen to the title of Fire Captain or provide evidence that they are no longer performing the duties of a Fire Captain. The Board further orders that in the event that any of individuals named above are appointed, they are to receive retroactive appointment dates of February 4, 2006, upon successful completion of their working test periods.

In the event that the appointing authority has not made a good faith effort to comply with this decision within 10 days of issuance of this decision, the Board orders that a fine be assessed against the appointing authority in the amount of \$100 per day, beginning on the 11<sup>TH</sup> day from the issuance of this decision, and continuing for each day of continued violation, up to a maximum of \$10,000.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.